

HOUSE BILL 4135

By Ferguson

AN ACT to amend Tennessee Code Annotated, Title 45;  
Title 47 and Title 49, relative to educational loans.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 4, is amended by adding the following as a new Part 11:

§ 49-4-1101.

As used in this part, unless the context otherwise requires:

(1) "Borrower" means a student attending a covered institution in this state, or a parent or person in parental relation to such student, who obtains an educational loan from a lending institution to pay for or finance higher education expenses;

(2) "Covered institution" means any postsecondary institution operating in this state;

(3) "Covered institution employee" means any employee, agent, contractor, director, officer or trustee of a covered institution;

(4) "Educational loan" means any loan that is made, insured, or guaranteed under Part B of Title IV of the Higher Education Act of 1965, as amended, any high risk loan or any private loan issued by a lending institution for the purposes of paying for or financing higher education expenses;

(5) "Gift" means any discount, favor, gratuity inducement, loan, stock, thing of value, or other item having more than nominal value.

(A) The term "gift" shall include, but is not limited to:

(i) Any money, service loan, entertainment, honoraria, hospitality, lodging costs, meals, registration fees, travel expenses, discount, forbearance or promise;

(ii) Gifts provided in kind, by purchase of a ticket, payment in advance, or reimbursement after expenses have been incurred;

(iii) Computer hardware for which the recipient pays below-market prices; or

(iv) Printing costs or services.

(B) The term "gift" shall not include a lending institution's own brochure or promotional literature; or material furnished to a covered institution employee as an integral part of a training session, if such training contributes to the professional development of the covered institution employee.

(C) Nothing in this part shall be construed to affect the private philanthropic activities of banks or other lending institutions that are unrelated to educational loans;

(6) "High risk loan" means any agreement between a lending institution and a covered institution that provides for the lending institution to provide loans to students with a poor or no credit history, who otherwise would not be eligible for educational loans;

(7) "Higher education expenses" include the following:

(A) Tuition and fees;

(B) Costs incurred for books, supplies, transportation, and miscellaneous personal expenses; and

(C) Room and board costs;

(8) "Lending institution" means:

(A) Any entity that itself or through an affiliate makes educational loans to pay for or finance higher education expenses or that securitizes such loans;

(B) Any entity, or association of entities, that guarantees educational loans; or

(C) Any industry, trade or professional association or other entity that receives money, related to educational loan activities, from any entity described subdivisions (A) or (B);

(9) "Lending institution employee" means any employee, agent, contractor, director, officer or trustee of a lending institution;

(10) "Preferred lender list" means a list of one (1) or more recommended or suggested lending institutions that a covered institution makes available for use, in print or any other medium or form, by borrowers, potential borrowers or others; and

(11) "Revenue sharing" means any arrangement whereby a lending institution pays a covered institution or an affiliated entity or organization of such covered institution a percentage of the principal of each loan directed towards the lending institution from a borrower at the covered institution; and

(12) "THEC" means the Tennessee higher education commission.

§ 49-4-1102.

(a) A lending institution shall not, directly or indirectly, offer or provide any gift to a covered institution, or a covered institution employee, in exchange for any advantage or consideration provided to such lending institution related to its educational loan activities.

(b) A lending institution shall not engage in revenue sharing with a covered institution.

§ 49-4-1103.

(a) A covered institution shall not, directly or indirectly, solicit, accept or receive any gift from or on behalf of a lending institution, in exchange for any advantage or consideration provided to such lending institution related to its educational loan activities.

(b) A covered institution shall not engage in revenue sharing with a lending institution.

§ 49-4-1104.

(a) A covered institution shall require that no covered institution employee on the employee's own behalf or on behalf of another, directly or indirectly, solicits, accepts or receives any gift from or on behalf of a lending institution. Nothing in this subsection shall be construed as prohibiting a covered institution employee from conducting business with a lending institution, provided that such business not related in any manner to a covered institution.

(b) A covered institution employee, on the employee's behalf or on behalf of another, shall not directly or indirectly solicit, accept or receive any gift from or on behalf of a lending institution. Nothing in this subsection shall be construed as prohibiting a covered institution employee from conducting business with any lending institution, provided that such business is not related to the covered institution.

(c) A covered institution employee shall report to THEC any instance of a lending institution attempting to give a gift to a covered institution employee.

§ 49-4-1105.

(a) A lending institution shall not pay a covered institution employee any remuneration or any reimbursement of expenses for serving as a member or participant of an advisory board of a lending institution.

(b) A covered institution shall require that no covered institution employee of such covered institution receives any remuneration or any reimbursement of expenses for serving as a member or participant of an advisory board of a lending institution. No covered institution employee shall solicit or accept any remuneration or reimbursement of expenses for serving as a member or participant of an advisory board of a lending institution.

(c) Nothing in this section shall be construed as a prohibiting:

(1) A covered institution employee's participation on an advisory board of a lending institution that is not related in any manner to educational loans; or

(2) A covered institution employee, who does not have a direct interest in or does not benefit from the functions of the covered institution's financial aid office, from serving on a board of directors of a publicly traded or privately held company.

(d) Covered institution employees who are directly involved with or benefit from the functions of the covered institution's financial aid office shall be required to report to THEC, in a form and manner prescribed by the commission, all participation or financial interests related to any lending institution.

§ 49-4-1106.

(a) A lending institution shall not identify or represent to borrowers or potential borrowers an employee or agent of such lending institution as an employee, representative or agent of a covered institution. An employee or agent of a lending institution shall not identify or represent any employee or agent of the lending institution

to borrowers or potential borrowers as an employee, representative or agent of a covered institution.

(b) A covered institution shall not identify or represent to borrowers or potential borrowers of a lending institution any employee or agent of a lending institution as an employee, representative or agent of such covered institution.

(c) No employee, representative or agent of a lending institution shall staff a covered institution's financial aid offices.

§ 49-4-1107.

(a) Should a borrower or potential borrower consult a covered institution's financial aid office in connection with obtaining an educational loan to pay for or finance higher education expenses, the covered institution shall inform the borrower or potential borrower of all available financing options under Title IV of the Higher Education Act of 1965, as amended, including any terms and conditions of available loans under such title that are more favorable to the borrower than those of private educational loans, before a lending institution may provide a private educational loan to a borrower attending the covered institution.

(b) A lending institution shall not enter into an agreement or otherwise provide high risk loans, in exchange for the covered institution providing concessions or promises to the lending institution that may prejudice borrowers or potential borrowers.

(c) A covered institution shall not enter into an agreement or otherwise provide high risk loans, in exchange for the covered institution providing concessions or promises to the lending institution that may prejudice borrowers or potential borrowers.

§ 49-4-1108.

(a) A preferred lender list shall disclose the process by which the covered institution selected lending institutions for such preferred lender list, including, but not

limited to, the method and criteria used to choose the lending institutions and the relative importance of those criteria.

(b) A preferred lender list shall state in the same font size and same manner as the predominant text on the document that borrowers have the right and ability to select the education loan provider of their choice, are not required to use any of the lenders on such preferred lender list, and shall suffer no penalty for choosing a lender that is not on such preferred lender list.

(c) The covered institution's decision to include a lending institution on any preferred lender list and the covered institution's decision as to where on the preferred lender list the lending institution's name appears shall be determined solely by consideration of the best interests of the borrowers who may use such preferred lender list without regard to the pecuniary interests of the covered institution.

(d) The contents of any preferred lender list shall be reviewed and updated no less than annually.

(e) No lending institution shall be placed on a preferred lender list unless such lending institution provides assurance to the covered institution and to borrowers who take out loans from such lending institution that the advertised benefits upon repayment will continue to inure to the benefit of borrowers regardless of whether the lending institution's loans are sold.

(f) No lending institution that, to the covered institution's knowledge after reasonable inquiry, has an agreement to sell its loans to another unaffiliated lending institution shall be included on a preferred lender list unless such agreement is disclosed therein in the same font size and same manner as the predominant text on the document in which the preferred lender list appears.

(g) No lending institution shall be placed on a covered institution's preferred lender list or in favored placement on a covered institution's preferred lender list for a particular type of loan, in exchange for benefits provided to the covered institution or to the covered institution's students in connection with a different type of loan.

§ 49-4-1109.

A covered institution shall not direct, in any manner, potential borrowers to any electronic master promissory notes or other loan agreements that do not provide a reasonable and convenient alternative for the borrower to complete a master promissory note with any federally approved lending institution offering the relevant loan in this state.

§ 49-4-1110.

Except for education loans made, insured, or guaranteed by the federal government, upon the request of any covered institution, a lending institution shall disclose to such covered institution, in reasonable detail and form, the historic default rates of the borrowers from such covered institution, and the rates of interest charged to borrowers from such covered institution in the year preceding the disclosures and the number of borrowers obtaining each rate of interest.

§ 49-4-1111.

THEC shall require that any covered institution authorized to operate in the state pursuant to title 49, chapter 7, part 20 shall comply with the requirements of this part.

§ 49-4-1112.

THEC shall investigate any report of a potential violation of this part by a covered institution or any potential violation of the part by a covered institution of which the commission has become aware. If, after providing notice to such institution and the opportunity to be heard, THEC determines that the covered institution has violated any

provision of this part, then THEC shall report the violation to the governing body of the institution and:

(1) If the institution is state-operated, then THEC shall prohibit the use of a preferred lender list at such institution for a period of at least five (5) years.

The University of Tennessee board of trustees or the Tennessee board of regents, as applicable to the institution violating the provisions of this part, shall take such measures as it finds necessary to prevent future violations. Within ninety (90) days of the finding of a violation, the applicable governing body shall report the measures taken to prevent future violations to the general assembly and to THEC. THEC shall monitor the institution's financial aid practices for a period of at least five (5) years. By the second Tuesday in January of each year during a period of monitoring, THEC shall report its findings concerning such institution and its compliance with this part to the general assembly;

(2) If the covered institution is required under title 49, chapter 7, part 20, to be authorized by THEC in order to operate in this state, then THEC shall conduct a hearing as to whether such institution shall continue to be authorized to operate. THEC shall specify measures to be taken by the institution to prevent future violations of the provisions of this part in order for it to continue to operate in the state. A second violation of this part shall result in a revocation of authorization to operate; or

(3) If the covered institution is not a state-operated institution of higher education and is exempt from the provisions of title 49, chapter 7, part 20, then such exemption is hereby revoked. The institution shall be required to comply with the provisions of title 49, chapter 7, part 20 until such time as THEC determines that no future violation of this part is likely to occur.

By the second Tuesday in January of each year, THEC shall report to the general assembly the number of violations of this part by covered institutions and the institutions that it found violating this part in the preceding year. THEC shall also specify the type of violations that occurred, the corrective measures taken, and such other information that it finds necessary to inform the general assembly concerning compliance with this part. THEC shall at the time of the annual report make any recommendation as to legislation that it finds would aid in preventing educational loan abuse.

§ 49-4- 1113.

(a) A violation of this part by a lending institution, an employee of a lending institution or a covered institution employee is a Class A misdemeanor punishable only by a fine of not more than ten thousand dollars (\$10,000).

(b) A lending institution that has been convicted of a violation of this part shall not be placed on or remain on any covered institution's preferred lender list unless notice of such violation is provided to all potential borrowers of the covered institution.

SECTION 2. THEC is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2008, the public welfare requiring it.